SANJIV

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 2382 OF 2006

Nilesh Jethalal Furia ....Petitioner

Vs.

Kartikeya Lunia & Anr. ....Respondents

Ms. Vidya Ambani i/by D. M. Joshi for petitioner.

Mr. D. S. Manekar for respondent 1.

Ms. M. M. Deshmukh, APP for the State.

CORAM : SMT. RANJANA DESAI, J.

DATE : 4TH DECEMBER, 2006.

P. C.:-

1. The petitioner is the original accused in case No. 5711/SS/2005 pending in the 12th Metropolitan Magistrate's Court Bandra. The petitioner has challenged in this writ petition order dated

18/09/2006 passed by the Additional Sessions Judge, Greater Bombay dismissing his criminal revision application. It appears that the complainant made an application on 12/05/2006 that summons be issued to Mrs. Jigna Nilesh Furia, wife of the accused, because the evidence on record shows that the account from which the cheques were issued, did not stand in the name of the accused. It was in the name of his wife.

2. The learned Magistrate wanted to know who had signed the cheques. Therefore, summons was issued under Section 311 of the Criminal Procedure Code. In my opinion, no interference is necessary with the impugned order. Under section 311 of the Criminal Procedure Code any person can be summoned to the court for examination as a witness at any stage of any inquiry, trial or other proceeding for a just decision of the case. In the facts of this case, in my opinion the Magistrate cannot be faulted for issuing summons to the wife of the accused as her evidence is essential to arrive at just decision of the case. Needless to say that the accused will have a right to rebut that evidence. The learned counsel for the petitioner urged that the proceedings have been initiated on a wrong

footing. I may make it clear that all contentions of the petitioner are kept open. With the above observations, the writ petition is dismissed.

(SMT. RANJANA DESAI, J)